

**BEFORE THE IOWA
ETHICS AND CAMPAIGN DISCLOSURE BOARD
Pursuant to Chapter 17A and Chapter 68B**

IN THE MATTER OF:

**TERRY STEWART,
In the Capacity as the Chair for Dubuque
County Democratic Central Committee,
RESPONDENT.**

)
) **Case No. 2008 IECDB 14**
)
) **PROPOSED DECISION and**
) **ORDER OF THE PRESIDING**
) **OFFICER**

A hearing was held on November 19, 2008. The Board's legal counsel, Charles Smithson, and Respondent Terry Stewart were present by telephone. The hearing was to determine if the Respondent violated Iowa Code Section 68A.402 and Iowa Code Section 68B.32A(7)

The parties agreed to proceed informally on the Statement of Charges dated October 23, 2008, which allege that the Dubuque Democratic Central Committee failed to timely file its campaign disclosure report which was due May 19, 2008. By letter dated July 18, 2008 the Respondent admitted that the required report was not filed until June 27, 2008, which was a period of time in excess of 31 consecutive days.

Respondent stated that the intent of his letter was to request waiver of the civil penalty or some other consideration because of extenuating circumstances concerning the 2007 deterioration of the health of the Treasurer, who maintained the financial records of the Central Committee. At the hearing the facts were explored and the Respondent was very cooperative.

It appears that a replacement Treasurer was recruited and took over the responsibilities of the office by March of 2008. No notification of the change was

given to the Board within the 30 days required. It is clear that this failure and the failure to timely file the report on May 19, 2008 was not intentional. It was simply a case of oversight and lack of knowledge on the part of the new Treasurer and the Respondent. The undersigned understands that these things can happen, but the Board is charged with making sure reports are timely filed for the purpose of keeping the public informed about the financial activities of candidates and committees.

Traditionally pertinent medical emergencies have served as the basis of Board action in waiving or reducing fines assessed, but the Board must weigh the circumstances in each case to make sure the persons responsible know or should know their reporting duties. In this case there appears to have been about two months for the new Treasurer and the Chairman to determine what their responsibilities were to know their statutory duties and to make appropriate timely reports. The undersigned believes that the neither the inactions of the Respondent nor the new Treasurer were in the nature of derelictions of duty. These inactions were just unintentional human mistakes.

At the outset of the hearing it was noted that the penalty originally imposed by the Board was \$200, and reference was made to the questionable application of 351-4.59(3) to a county central committee. Counsel for the Board advises that the applicable section of the administrative rules should have been 351-4.59(2) which call for only a \$100 penalty for a first time delinquency of more than 31 days. The undersigned agrees that the maximum penalty that can be imposed in this instance is \$100.

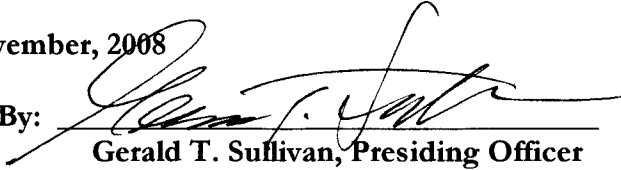
The undersigned also recommends that the language of 351-4.59(2) should be amended to specifically add "county central committees" as a party to whom civil penalties may be assessed.

The undersigned further recommends that the term "treasurer of a committee" in 351-4.59(2) be amended to instead designate the "candidate or chairperson of a committee" in order to be in harmony with the language of Section 68B.32A(7) of the Code of Iowa which requires the candidate or the chairperson as the persons responsible for filing disclosure reports. *[As a further note the Board should consider a similar amendment to 321-4.59(3).]*

It is therefore ORDERED PENDING FINAL APPROVAL by the Iowa Ethics and Campaign Disclosure Board that the Respondent shall pay a civil penalty in the amount of \$100 for failure to file the campaign disclosure report on or before May 19, 2008.

Dated this 24th day of November, 2008

By:


Gerald T. Sullivan, Presiding Officer

Pursuant to rule 351—11.26(1), within 14 days after the issuance of this proposed decision either party may serve a statement of exceptions with the proposed decision together with a brief and arguments. An exception shall be served by delivery of the original and five copies of each document to the Board office. A copy of all filings shall also be served on the opposing party. At the time of filing an exception, either party may request oral arguments. If oral arguments are not requested, the Board will rule on the arguments raised in the briefs. If exceptions are not filed concerning this matter the Board will automatically review this proposed decision. The Board's decision on review of a proposed decision is a final agency action. Pursuant to the provisions of 351—11.27, either party may apply for a rehearing from a final order of the Board.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this Proposed Decision and Order of the Presiding Officer was sent by first class mail, address service requested, on November 24, 2008 to:

Terry Stewart
Dubuque County Democratic Party
P.O. Box 686
Dubuque, Iowa 52004-0686

W. Charles Smithson
Iowa Ethics & Campaign Disclosure
Board
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Des Moines, Iowa 50319